

# MINUTES

## STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, NOVEMBER 20, 2009

HOUSE ROOM C  
GENERAL ASSEMBLY BUILDING  
9<sup>TH</sup> & BROAD STREETS  
RICHMOND, VIRGINIA

Board Members Present:

Richard D. Langford  
Vivian E. Thomson  
Randolph L. Gordon  
Marina L. Phillips

Bruce C. Buckheit  
Hullihen W. Moore  
Sterling E. Rives, III

Department of Environmental Quality:

David K. Paylor

Cindy M. Berndt

Attorney General's Office:

Kerri Nicholas, Assistant Attorney General

The meeting was convened at 9:40 a.m., recessed at 12:30 p.m., reconvened at 1:25 p.m. and adjourned at 5:14 p.m.

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**Minute No. 1 - Minutes:** The Board, on a motion by Ms. Thomson, unanimously approved the minutes from the September 3, 2009, meeting.

**Minute No. 2 - Case-by-case Control Technology Determinations (Article 51 of 9VAC5 Chapter 40, Rev. E04c) - Request for Board Action on Exempt Final Regulation:** Ms. Karen G. Sabasteanski, Office of Regulatory Affairs, presented amendments to the regulations for the control and abatement of air pollution concerning Case-by-Case Control Technology Determinations. Ms. Sabasteanski explained that Section 182 of the federal Clean Air Act requires that the state implementation plans (SIPs) require reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>). Subpart X to 40 CFR Part 51, which covers the implementation of the 8-hour ozone standard, requires that nonattainment areas meet the requirements of § 51.900(f), including RACT and major source applicability cut-offs for purposes of RACT. Ms. Sabasteanski advised the Board that two typographical errors had been identified in the Virginia regulation (Article 51 of 9VAC5 Chapter 40) that implements Subpart X, and that revisions were necessary to 9VAC5-40000-7420 F and G to correctly cross-reference 9VAC5-40-7410.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Thomson, unanimously adopted the amendments as a final exempt action with an effective date consistent with the Administrative Process Act and affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision.

**Minute No. 3 - Federal Documents Incorporated by Reference (Rev. H09) - Request for Board Action on Exempt Final Regulation:** Ms. Karen G. Sabasteanski, Office of Regulatory Affairs, presented amendments to the regulations for the control and abatement of air pollution concerning federal documents

incorporated by reference. Ms. Sabasteanski informed the Board that the purpose of the proposed action was to amend the regulations to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rules 5-5, 6-1, and Rule 6-2, respectively, of the board's regulations and to update the Board's regulations that incorporate certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2008. She advised the Board that:

1. Two new NSPSs were being incorporated: Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (Subpart VVa, 40 CFR 60.480a -489a); and Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (Subpart GGGa, 40 CFR 60.590a-593a). The date of the Code of Federal Regulations book being incorporated by reference was also being updated to the latest version.
2. No new NESHAPs were being incorporated. The date of the Code of Federal Regulations book being incorporated by reference was being updated to the latest version.
3. Two new MACTs were being incorporated: Plating and Polishing Operations, Area Sources (Subpart WWWWW, 40 CFR 63.11504-11513), and Ferroalloys Production Facilities, Area Sources (Subpart YYYYYY, 40 CFR 63.11524-11543). Two new MACTs were not being incorporated at this time: Nine Metal Fabrication and Finishing Source Categories, Area Sources (Subpart XXXXXX, 40 CFR 63.11514 - 11523), and Aluminum, Copper, and Other Nonferrous Foundries, Area Sources (Subpart ZZZZZZ, 40 CFR 63.11544-11558); those standards are listed with a note that enforcement of the standard rests with EPA. The date of the Code of Federal Regulations book being incorporated by reference was being updated to the latest version.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Thomson, unanimously adopted the amendments as a final exempt action with an effective date consistent with the Administrative Process Act and affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision.

**Minute No. 4 - Consumer and Commercial Products (9VAC5 Chapter 45, Rev. D06) - Public Participation Report and Request for Board Action:** Mr. Gary Graham, Office of Regulatory Affairs, presented final amendments to the regulations for the control and abatement of air pollution concerning consumer products. Mr. Graham explained that the amendments to the existing consumer products regulations were recommended by the Metropolitan Washington Air Quality Committee in order to achieve the necessary reductions of VOC emissions in the Northern Virginia area and by the George Washington Air Quality Committee for the Fredericksburg and Spotsylvania County area.

Mr. Graham briefed the Board on the substantive amendments originally proposed for public comment, the substantive public comments received on the proposed amendments and the revisions being recommended in response to the comment received.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Thomson, unanimously adopted the amendments with an effective date as provided in the Administrative Process Act

**Minute No. 5 - Northern Virginia Opacity Revision Petition Comments and Recommendation:** Ms. Doris McLeod, Air Quality Planner, Air Division, advised the Board that a petition had been submitted by the Metropolitan Washington Air Quality Committee requesting that the Board lower the opacity standard to 10% for at least the northern Virginia nonattainment area. She then presented the results of the public comment period on the petition and staff analysis of those comments.

Ms. Joan Rohlf of MWAQC appeared to again request that a rulemaking be initiated. Comments on initiating a rulemaking were also received from Messrs. Ralph (Bill) L. Axselle, Jr. and William Skrabak.

Ms. McLeod presented the staff recommendation to not initiate a rulemaking at this time and advised the Board that the recommendation was based on the benefit of new opacity limits were difficult to quantify and impacted entities commented on the significant costs to retrofit, upgrade and or replace equipment; PM2.5 air quality is good with trends showing improvement and inventory estimates showing large expected reductions in precursor pollutants in coming years; and the limited agency resources for regulation development were better used on other air quality improvement programs.

Based on the Board book material, presentations by staff and others and Board discussion, the Board, on a motion by Mr. Langford, approved the staff recommendation to not initiate a rulemaking at this time. The vote was 4 to 3 with Messrs. Langford, Gordon and Rives and Ms. Phillips voting aye and Ms. Thomson and Messrs. Moore and Buckheit voting nay.

#### **Minute No. 6 - Southern Appalachia Mountain Stewards and Sierra Club Petition for Rulemaking:**

Mr. Glen Besa of the Sierra Club appeared to introduce Mr. Walter Morris. Mr. Morris presented a petition from the Southern Appalachia Mountain Stewards and the Sierra Club to the State Air Pollution Control Board to amend the fugitive dust emissions standards for existing and new and modified stationary sources. He advised the Board that the petitioners are recommending that additional language be added to the fugitive dust standards for both existing and new and modified stationary sources to clarify what is meant by "reasonable precautions" and that the fugitive dust standard provide additional examples of reasonable precautions specific to the type of activities that contributed to the documented dust problem in Roda.

Following Mr. Morris, comments were received from Messrs. Pete Ramey and Adam Wells and Ms. Kathy Selvage.

The Board received the petition and was advised that the petition would be published in the Virginia Register of Regulations to begin the public comment period required by the Administrative Process Act.

**Minute No. 7 - High Priority Violators Report:** The Board received a report from Mr. Craig Nichol, Division of Enforcement, on high priority violators. The report covered the period of July 1, 2009 through September 30, 2009.

**Minute No. 8 - Particulate Matter in Roda:** Dr. Aneja appeared before the Board to present his conclusions on the differences in the data collected during his monitoring study in 2008 and the Department's monitoring in 2009. He stated that the differences could not be explained by the different monitoring methods, but by the implementation of initiatives that reduced fugitive dust in the area.

Ms. Crystal Bazyk, Air Compliance Manager in the Southwest Regional Office, briefed the Board on the activities that have transpired since the last Board meeting including discussions with the railroad to address drainage issues on Roda road, efforts relating to health issues with the Health Department and the ASTDR, a status of the number of coal trucks on the road, and actions taken by the Department of Mines, Minerals and Energy including a new guidance and procedure relating to road maintenance and fugitive dust that were issued. Ms. Bazyk recommended that a Memorandum of Agreement be entered into with the Department of Mines, Minerals and Energy that would address coordination of activities of all involved agencies, provide for DEQ referral of alleged violations of fugitive dust control requirements to DMME, for areas at coal-mining operations that do not have a SAPCB permit and not delegate or affect DEQ's authority to issue permits to coal-mining operations that require a SAPCB permit or otherwise enforce the Virginia State Air Pollution Control Law.

The Board then discussed the specifics of the Memorandum of Agreement and specific language suggestions were recommended by Mr. Moore and Mr. Rives.

Mr. Stephen A. Walz, Director of the Department of Mines, Minerals and Energy, appeared and answered questions of the Board.

The Board received the information.

**Minute No. 9 - Public Forum:** Ms. Lisa Craig, Ms. Kathryn Oliver, Ms. Betsy Shepard and Ms. Donna Slade appeared during the public forum and expressed concerns with the proposed coal-fired power plant to be built in Dendron by Old Dominion Electric Cooperative.

**Minute No. 10 - State Advisory Board Reports:** The Board received two reports from the State Advisory Board: Evaluation of Air Monitoring Network and Formaldehyde Work Group.

**Minute No. 11 - State Advisory Board Appointments:** The Board, on a motion by Mr. Buckheit, approved the following appointments to the State Advisory Board on Air Pollution:

For terms expiring December 31, 2011:

Anil Mehrotra  
Daniel Goldstein  
Kevin McGunnigle  
Tim Mallan  
Daniel Ancona, III  
Brian T. Castelli  
James Christman  
Dan Demers  
L. Evans Drake  
Paige Holt  
Gerald L. Pellett  
Sheryl Raulston

Ms. Thomson abstained.

**Minute No. 12 - Future Meetings:** The Board added January 8, 2010, to the dates of future meetings in order to discuss and consider those items on the agenda for November 20, 2009, that were not considered during the meeting.

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Cindy M. Berndt, Director, Office of Regulatory Affairs